

<p style="text-align: right;">Page 1</p> <p style="text-align: center;">IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO</p> <p>-----</p> <p>SECURITIES AND EXCHANGE        ) COMMISSION,                        )                     Plaintiff,        ) vs.                                ) Case No. LARRY A. GOLDSTONE,            ) CIV 12-0257 JB/LFG CLARENCE G. SIMMONS, III,       ) VOLUME I AND JANE E. STARRETT,         )                     Defendants.        ) -----</p> <p>VIDEOTAPED DEPOSITION OF CHRISTOPHER M. JAMES, Ph.D. LOS ANGELES, CALIFORNIA WEDNESDAY, APRIL 2, 2014</p> <p>Reported by: RICKI Q. MELTON, CSR No. 9400 Job No. 1840093</p> <p>PAGES 1 - 252</p>	<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES OF COUNSEL:</p> <p>2</p> <p>3 FOR THE PLAINTIFF:</p> <p>4</p> <p>5 UNITED STATES</p> <p>6 SECURITIES AND EXCHANGE COMMISSION</p> <p>7 BY: DUGAN BLISS, ESQ.</p> <p>8 STEPHEN C. McKENNA, ESQ.</p> <p>9 1801 California Street</p> <p>10 Suite 1500</p> <p>11 Denver, Colorado 80202</p> <p>12 (303) 844-1026</p> <p>13 blissd@sec.gov</p> <p>14</p> <p>15 FOR THE DEFENDANTS LARRY A. GOLDSTONE AND</p> <p>16 CLARENCE G. SIMMONS:</p> <p>17</p> <p>18 WILMER CUTLER PICKERING HALE AND DORR</p> <p>19 BY: RANDALL LEE, ESQ.</p> <p>20 350 South Grand Avenue</p> <p>21 Suite 2100</p> <p>22 Los Angeles, California 90071</p> <p>23 (213) 443-5360</p> <p>24 randall.lee@wilmerhale.com</p> <p>25</p>
<p style="text-align: right;">Page 2</p> <p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF NEW MEXICO</p> <p>3</p> <p>4</p> <p>5 -----</p> <p>6 SECURITIES AND EXCHANGE        ) 7 COMMISSION,                        ) 8                      Plaintiff,        ) 9 vs.                                ) Case No. 10 LARRY A. GOLDSTONE,            ) CIV 12-0257 JB/LFG 11 CLARENCE G. SIMMONS, III,       ) VOLUME I 12 AND JANE E. STARRETT,         ) 13                      Defendants.        ) 14 -----</p> <p>15</p> <p>16</p> <p>17</p> <p>18 Videotaped Deposition of CHRISTOPHER M. JAMES,</p> <p>19 Ph.D., taken at 601 South Figueroa Street, 30th Floor,</p> <p>20 Los Angeles, California, commencing at 9:16 A.M.,</p> <p>21 Wednesday, April 2, 2014, before Ricki Q. Melton,</p> <p>22 CSR No. 9400, RPR No. 45429.</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 4</p> <p>1 APPEARANCES OF COUNSEL (Continued):</p> <p>2</p> <p>3 FOR THE DEFENDANT JANE E. STARRETT:</p> <p>4</p> <p>5 MILBANK, TWEED, HADLEY &amp; McCLOY LLP</p> <p>6 BY: ROBERT J. LIUBICIC, ESQ.</p> <p>7 ALISA SCHLESINGER, ESQ.</p> <p>8 601 South Figueroa Street</p> <p>9 30th Floor</p> <p>10 Los Angeles, California 90017</p> <p>11 (213) 892-4494</p> <p>12 rliubicic@milbank.com</p> <p>13</p> <p>14 ALSO PRESENT:</p> <p>15</p> <p>16 DAVID WEST, Video Operator</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>

## I N D E X

WEDNESDAY, APRIL 2, 2014

WITNESS: EXAMINATION

CHRISTOPHER M. JAMES, Ph.D.

(By Mr. Bliss)	9
(P.M. Session)	108
(By Mr. Liubicic)	249

## UNANSWERED QUESTIONS

(None)

## INFORMATION REQUESTED

(None)

## DEPOSITION EXHIBITS

CHRISTOPHER M. JAMES, Ph.D.

NUMBER	DESCRIPTION	IDENTIFIED
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Exhibit 386	The Market Pricing of Other-Than-Temporary Impairments.	97
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Exhibit 387	Rebuttal Report of Lawrence P. Weiner.	110
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Exhibit 388	TED spread February 2008.	172
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Exhibit 389	Mortgage Spreads Log 02/26/2008.	183
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LOS ANGELES, CALIFORNIA, APRIL 2, 2014

9:16 A.M.

-o0o-

VIDEO OPERATOR: Good morning. We are on the record at 9:16 A.M. The date today is April 2nd, 2014.

This is the video recorded deposition of Dr. Christopher M. James.

My name is David West, here with our court reporter Ricki Q. Melton. We're here from Veritext Legal Solutions at the request of counsel for plaintiff.

The deposition is being held at 601 South 0 Figueroa Street, 30th Floor -- actually we're on the 31st Floor, thank you -- Los Angeles, California.

The caption of this case is Securities and Exchange Commission versus Larry A. Goldstone, et al., case No. 12257 (JV LFG.)

Please note that audio and video recording will take place unless all parties agree to go off the record. Microphones are sensitive and may pick up whispers, private conversations, as well as cellular interference.

I am not authorized to administer an oath.

I am not related to any party in this action, nor am I financially interested in the outcome in any way.

If there are any objections to proceeding, please state them at the time of your appearance, starting with the noticing attorney.

MR. BLISS: Dugan Bliss on behalf of plaintiff U.S. Securities and Exchange Commission.

MR. McKENNA: Stephen McKenna on behalf of plaintiff U.S. Securities and Exchange Commission.

MR. LIUBICIC: Robert Liubicic and Alisa Schlesinger from Milbank, Tweed, Hadley & McCloy on behalf of defendant Jane Starrett.

MR. LEE: Randall Lee from Wilmer Cutler Pickering Hale and Dorr on behalf of Mr. Goldstone and Mr. Simmons.

VIDEO OPERATOR: Thank you.

The witness will now be sworn in, and we can proceed.

CHRISTOPHER M. JAMES, Ph.D., the witness, having been first administered an oath in accordance with CCP section 2094, testified as follows:

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1 conclusion that an OTTI disclosure in Thornburg's  
2 Form 10-K on February 28th, 2008, would not have  
3 had a material impact on Thornburg's stock price?

4 A I think that the -- and I think we're  
5 going over old territory, and I would refer you  
6 back to my prior testimony on these issues.

7 I think my analysis indicates that the  
8 dates that -- that Mayer has identified and the  
9 methodology that he is using is not a methodology,  
10 given the facts and circumstances of this case,  
11 that would inform the finder of fact as to the  
12 materiality of a hypothetical OTTI and going  
13 concern based on information on 2/28 that existed  
14 on -- as of the beginning of the day on 2/28/08 and  
15 that there is, as I discussed earlier today,  
16 evidence that would suggest the lack of materiality  
17 based upon the nature of the disclosure, the  
18 hypothetical disclosure, and the information that  
19 was conveyed to the market on 2/28.

20 Q Okay. And I appreciate that, and we have  
21 talked a lot again about your criticism of  
22 Mr. Mayer, but you just referenced evidence that  
23 would suggest lacking materiality.

24 Do you recall that?

25 A That's right.

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1 Q And so what I'm focused on is:  
2 Independent of your criticism of Mr. Mayer, does  
3 your event study lead you to a conclusion on way or  
4 another --

5 A Uh-huh.

6 Q -- as to whether an OTTI disclosure in  
7 Thornburg's Form 10-K on February 28th, 2008, would  
8 have had a material impact on Thornburg's stock  
9 price?

10 A And I'll give you the same answer I have  
11 given you before. It -- I don't think it raises --  
12 it certainly -- that event study doesn't provide  
13 evidence of materiality.

14 Q "It" being your event study?

15 A My event study as well as Mr. Mayer's  
16 event study.

17 Q You say it doesn't provide evidence of  
18 materiality.

19 What I'm trying to understand is: Does  
20 that mean that your event study concluded that an  
21 OTTI disclosure on February 28th, 2008, would have  
22 been immaterial?

23 A I think that it is demonstrating that the  
24 court should not rely on Mr. Mayer's analysis for  
25 purposes of establishing materiality.

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1 Q I appreciate that.

2 A Let me finish answering the question before  
3 you ask me another one, if you would, please.

4 In addition, I think, when you look at the  
5 content and the information -- incremental  
6 information that would be disclosed with respect  
7 to, for example, an OTTI, there are sound economic  
8 reasons to believe it would not be material.

9 Q I appreciate that there are sound economic  
10 reasons that would not be material, but did your  
11 event study conclude that, in fact, an OTTI  
12 disclosure would not have been material?

13 MR. LIUBICIC: Objection. Asked and  
14 answered.

15 THE WITNESS: I don't know how to answer  
16 that question any differently than I have today.

17 BY MR. BLISS:

18 Q Well, one way would be "yes" or "no."

19 A And I've indicated to you on a number of  
20 occasions when you've asked me that question, and I  
21 can -- I can go through that answer again with you  
22 if you would like.

23 Q Can you answer the question with a "yes"  
24 or "no"?

25 Does your event study lead you to a

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1 conclusion that an OTTI disclosure in Thornburg's  
2 Form 10-K on February 28th, 2008, would have been  
3 immaterial?

4 Can you answer that with a "yes" or "no"?

5 A I don't think it's informative of the  
6 question for the reasons I have given you. Okay.

7 As I understand this process, again, is  
8 that your expert has -- is to provide an argument  
9 as to why it's material, okay, and he has not done  
10 that. He has provided a flawed argument, okay, and  
11 I have explained to you what the nature of those  
12 flaws are.

13 Then you are saying, well, so can his  
14 analysis demonstrate the lack of materiality?  
15 Okay. And the answer is, well, it can't -- it's  
16 flawed in terms of trying to identify materiality.  
17 I would agree with him. That's my point. Okay.

18 Q And maybe I have been unclear because I am  
19 asking now about your analysis about your event  
20 study.

21 I definitely understand that one of the  
22 things you are accomplishing with your report is to  
23 criticize Mr. Mayer's event study; correct?

24 A Right.

25 Q What I'm trying to understand is whether,

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1 in addition to criticizing his conclusion that OTTI  
 2 disclosure would have been material, whether you  
 3 are independently finding with your own event study  
 4 that an OTTI disclosure would have been immaterial.  
 5 That's what I'm trying to understand.  
 6 A I think --  
 7 Q Are you doing that?  
 8 A I think -- and, again, my -- as my  
 9 assignment indicates, I have been asked to rebut the  
 10 testimony and to analyze the testimony of Mr. Mayer  
 11 and asked to render an opinion as to whether his  
 12 methodology provides reliable evidence of  
 13 materiality, and my conclusion is it does not, and  
 14 I have also concluded that, based on the facts and  
 15 circumstances that I have seen in this case, I  
 16 don't see evidence of materiality.  
 17 Those are the opinions that I expect to  
 18 provide at trial.

19 Q And when you say you don't see evidence of  
 20 materiality, that is from your own studies, from  
 21 your own event study, from your own analysis?

22 A As well as the analysis that Mr. Mayer has  
 23 conducted.

24 Q But sitting here today, you cannot testify  
 25 with certainty that an OTTI disclosure on

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1 February 28th, 2008, in Thornburg's Form 10-K would  
 2 have been immaterial; is that right?

3 A I have seen no evidence that indicates it  
 4 was material.

5 Q But can you testify that it was  
 6 immaterial?

7 A Let me sort of indicate to you how the  
 8 scientific method works. Okay?

9 You test on a hypothesis. We're testing  
 10 the hypothesis is it material. Okay? We find  
 11 evidence that is indicating that it was not  
 12 material, okay, or the test is flawed with respect  
 13 to a determination of materiality.

14 Q Uh-huh.

15 A Okay. I have seen no evidence that  
 16 indicates that it was material. Okay? And your  
 17 experts haven't provided any evidence of  
 18 materiality.

19 Q Okay. That is helpful. Let me ask you a  
 20 question that may be a better question.

21 Did you test the hypothesis that an OTTI  
 22 disclosure on February 28th, 2008, in Thornburg's  
 23 Form 10-K would have been immaterial?

24 MR. LIUBICIC: Objection. Lack of  
 25 foundation.

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1 THE WITNESS: I think, as I have indicated  
 2 to you, the evidence that I have seen doesn't  
 3 provide evidence of materiality.

4 BY MR. BLISS:

5 Q I do understand that. You have said that  
 6 repeatedly, but when you were just explaining it to  
 7 me, you said specifically that you tested the  
 8 hypothesis that an OTTI disclosure would have been  
 9 material.

10 A Right.

11 Q What I'm asking you is: Did you test the  
 12 hypothesis that an OTTI disclosure would have been  
 13 immaterial?

14 A I wasn't --

15 MR. LIUBICIC: Objection. Lack of  
 16 foundation.

17 THE WITNESS: I wasn't asked to do that.

18 BY MR. BLISS:

19 Q And so you didn't?

20 A No. I have been asked to respond to what  
 21 I understand your expert's task was, to test the  
 22 hypothesis as to whether a hypothetical OTTI and  
 23 going concern would have been material, and as I  
 24 indicate, he hasn't provided evidence in support of  
 25 that hypothesis.

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1 Q And did your event study lead you to a  
 2 conclusion as to whether a going concern  
 3 disclosure -- you know what? Strike that. Let me  
 4 ask a better question.

5 A Okay.

6 Q Did you test the hypothesis that a going  
 7 concern disclosure in Thornburg's Form 10-K on  
 8 February 28th, 2008, would have been material?

9 A I think I have already answered that  
 10 question today, and I would refer you back to my  
 11 prior testimony.

12 I think my resp -- just to summarize what  
 13 that testimony is, I mean my answer to that  
 14 question is the same answer I gave with respect to  
 15 the OTTI.

16 Q I'm sorry. I don't understand what you  
 17 mean.

18 A We have been talking about -- you asked me  
 19 this question within the first 40 minutes of the  
 20 deposition today.

21 We first went down OTTI and going concern,  
 22 then we went and looked at OTTI separately, and  
 23 then you said would there be a difference with  
 24 respect to your opinion regarding going concern,  
 25 and I have indicated now my opinions regarding

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1 As we have talked about, as I understand  
 2 what has been alleged in the complaint in this case  
 3 is that it is alleged that Thornburg engaged in  
 4 accounting fraud in terms of its treatment of its  
 5 OTTI, and the issue, as I understand it in the  
 6 context of those allegations, is to assess the  
 7 probability and the likelihood that they would be  
 8 able to hold the portfolio until maturity and  
 9 whether their judgments were reasonable in that  
 10 context, and as I have indicated to you, that's my  
 11 opinion and belief, and it also -- I think that  
 12 Mr. Mayer's analysis doesn't address that specific  
 13 issue.

14 BY MR. BLISS:

15 Q And I'm not asking from an accounting  
 16 perspective, and so let me be more clear on the  
 17 perspective.

18 From the perspective of defendants, of  
 19 Thornburg's management, people who want Thornburg  
 20 to be able to continue as a going concern and meet  
 21 margin calls as they come in, is -- is it reasonable  
 22 or would it have been reasonable for Thornburg to  
 23 have sufficient liquidity to meet margin calls that  
 24 occur with a 25 percent frequency?

25 MR. LIUBICIC: Objection. Lack of

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1 foundation --

2 THE WITNESS: Again --

3 MR. LIUBICIC: -- beyond the scope of the  
 4 opinion.

5 THE WITNESS: -- reasonable in what  
 6 context and over what time period?

7 Is -- if you are looking over the time  
 8 period that Mr. Mayer analyzes, which I believe runs  
 9 to March 10th, is that -- was the level of liquidity  
 10 they had reasonable for purposes of rendering an --  
 11 a judgment that it was probable or likely that they  
 12 would be able to hold the portfolio at issue to  
 13 maturity? The answer is yes.

14 You know, would it -- was the level of  
 15 liquidity reasonable in the context of some other  
 16 business decision? I haven't been asked to address  
 17 that.

18 BY MR. BLISS:

19 Q Okay. So you don't intend to opine upon  
 20 that at trial?

21 A Well, only to the extent -- again, I'm a  
 22 rebuttal expert to Mr. Mayer, and Mr. Mayer -- I'm  
 23 not sure and he hasn't specified the business  
 24 context and the horizon over which he is making an  
 25 assessment of the reasonableness of management's

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1 decisions.

2 It appears to me, based on his analysis,  
 3 that he is assessing reasonableness in terms of  
 4 having an ability to meet, as the quote you gave  
 5 earlier to his testimony, margin calls over the  
 6 period of time that he has analyzed that were  
 7 remote and unlikely, and if that analysis is used  
 8 to draw inference regarding the reasonableness of  
 9 the management's decisions with regard to its OTTI  
 10 analysis, then I would be -- I expect to be  
 11 informing the court as to how remote those events  
 12 are and how they appear -- that analysis is not  
 13 probabilistic in nature, and the purpose of -- for  
 14 that analysis is -- hasn't been made -- hasn't been  
 15 articulated clearly by Mr. Mayer.

16 Q In your discussion of liquidity, you  
 17 reference the "CTC 'in the box' reports."

18 A Yes.

19 Q Do you recall that?

20 And that included 36.5 million in market  
 21 value agency securities; is that right?

22 A That's correct.

23 Q If there were 36.5 million in agency  
 24 securities, do you know why they weren't used to  
 25 pay off the Citibank margin calls earlier?

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1 MR. LIUBICIC: Objection. Lack of  
 2 foundation.

3 THE WITNESS: What do you mean?

4 BY MR. BLISS:

5 Q In other words, the margin calls that were  
 6 paid over time, do you know why --

7 A Oh.

8 Q -- that 36.5 million wasn't used to pay  
 9 those?

10 A Well, you know, I haven't delved into the  
 11 details of their liquidity management in the context  
 12 of their selective payment of some.

13 I would note that their -- their ability  
 14 to meet margin calls exceeded their available cash,  
 15 okay, which indicated the use of alternative sources  
 16 for purposes of meeting margin calls.

17 Q So you don't know why the 36.5 million in  
 18 agency securities were not used to pay off the  
 19 earlier margin calls?

20 A Without -- no, I don't --

21 Q Okay.

22 A -- specifically with respect to the  
 23 Citibank.

24 Q I'm going to hand you what has been  
 25 previously marked as Exhibit 247.

<p style="text-align: right;">Page 249</p> <p>1 professor of finance, whether he is qualified or is</p> <p>2 expert in finance, whether he's qualified to render</p> <p>3 the opinions that he has done -- he has rendered.</p> <p>4 Sorry.</p> <p>5 MR. BLISS: Let's take a short break.</p> <p>6 THE WITNESS: Okay.</p> <p>7 VIDEO OPERATOR: Off the record. 6:17.</p> <p>8 (Off the record.)</p> <p>9 VIDEO OPERATOR: We are back on the record</p> <p>10 at 6:34.</p> <p>11 MR. BLISS: Thank you, Dr. James. I don't</p> <p>12 have any more questions.</p> <p>13 THE WITNESS: Thank you.</p> <p>14 MR. LIUBICIC: Okay. I believe I only</p> <p>15 have one area to cover.</p> <p>16</p> <p>17 EXAMINATION</p> <p>18</p> <p>19 BY MR. LIUBICIC:</p> <p>20 Q Dr. James, do you remember a little while</p> <p>21 ago Mr. Bliss asking you if any portion of your</p> <p>22 testimony as an expert has ever been excluded?</p> <p>23 A Yes.</p> <p>24 Q Okay. Is there anything you would like to</p> <p>25 add to your answer or provide as a clarification to</p>	<p style="text-align: right;">Page 251</p> <p>1 and will be retained by Veritext Legal Solutions.</p> <p>2 We are off the record at 6:36.</p> <p>3 (Whereupon, at 6:36 P.M., the</p> <p>4 deposition of CHRISTOPHER M.</p> <p>5 JAMES, Ph.D., was adjourned.)</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 250</p> <p>1 your answer --</p> <p>2 A Sure.</p> <p>3 Q -- to the question?</p> <p>4 A In break, we discussed no portion of my</p> <p>5 testimony, as I understand it, has been excluded.</p> <p>6 There is an opinion or a ruling from a</p> <p>7 magistrate in another SEC case, BankAtlantic, in</p> <p>8 which she indicated my testimony couldn't be used</p> <p>9 for -- or my opinion could not be used for purposes</p> <p>10 of addressing issues of scienter. That wasn't an</p> <p>11 opinion that I was going to render in the case and</p> <p>12 was a use of an opinion concerning certain data</p> <p>13 that I wasn't making but was being used in argument,</p> <p>14 and that couldn't be used. So just to make sure</p> <p>15 that there's no confusion as to that particular</p> <p>16 ruling.</p> <p>17 MR. LIUBICIC: Okay. I have no further</p> <p>18 questions.</p> <p>19 MR. LEE: Nothing from me.</p> <p>20 MR. BLISS: Thank you.</p> <p>21 MR. McKENNA: Thank you.</p> <p>22 THE WITNESS: Safe travels.</p> <p>23 VIDEO OPERATOR: This concludes today's</p> <p>24 testimony given by Dr. Christopher M. James.</p> <p>25 The total number of media used was four</p>	<p style="text-align: right;">Page 252</p> <p>1 STATE OF CALIFORNIA )</p> <p>2 COUNTY OF LOS ANGELES )</p> <p>3</p> <p>4 I, RICKI Q. MELTON, CSR No. 9400, RPR No. 45429,</p> <p>5 do hereby certify:</p> <p>6 That the foregoing deposition testimony of</p> <p>7 CHRISTOPHER M. JAMES, Ph.D., was taken before me at</p> <p>8 the time and place therein set forth, at which time</p> <p>9 the witness was placed under oath and was sworn by</p> <p>10 me to tell the truth, the whole truth, and nothing</p> <p>11 but the truth;</p> <p>12 That the testimony of the witness and all objections</p> <p>13 made by counsel at the time of the examination were</p> <p>14 recorded stenographically by me and were thereafter</p> <p>15 transcribed under my direction and supervision, and</p> <p>16 that the foregoing pages contain a full, true, and</p> <p>17 accurate record of all proceedings and testimony to</p> <p>18 the best of my skill and ability.</p> <p>19 I further certify that I am neither counsel for</p> <p>20 any party to said action nor am I related to any</p> <p>21 party to said action, nor am I in any way</p> <p>22 interested in the outcome thereof.</p> <p>23 IN WITNESS WHEREOF, I have subscribed my name</p> <p>24 this 14th day of April, 2014.</p> <p>25</p> <p>25 RICKI Q. MELTON, CSR No. 9400, RPR No. 45429</p>